

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

**BENJAMIN F. MERCER,**

**Plaintiff,**

**v.**

**ALABAMA DEPARTMENT OF  
TRANSPORTATION,**

**Defendant.**


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**Case No.: 2:16-cv-1204-RDP**

**ORDER**

This case is before the court on Defendant's Motion to Dismiss Third Amended Complaint. (Doc. # 33). The parties have fully briefed the motion, and it is under submission. (Docs. # 39, 44). Upon careful review, the court concludes that Plaintiff has plausibly pled his race discrimination and retaliation claims and the issues raised in Defendant's motion are more appropriate for consideration in a Rule 56 motion. Accordingly, Defendant's motion to dismiss (Doc. # 33) is **DENIED**.

**DONE and ORDERED** this May 9, 2017.

  
**R. DAVID PROCTOR**  
UNITED STATES DISTRICT JUDGE